1 2 3 4	Kimmel & Silverman, P.C. 30 East Butler Pike Ambler, PA 19002 Telephone: (215) 540-8888 Attorney of Record: Amy L. Bennecoff Ginsb: Attorney for Plaintiff	urg (AB0891)	
5	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY		
6	FUR THE DISTRICT OF NEW JERSET		
7	THOMAS DELEO,) Case No.: 2:21-cv-3807	
0	Plaintiff,) Case No.: 2.21-cv-3807	
8 9	v.))	
10	NATIONAL REPUBLICAN SENATORIAL COMMITTEE,) COMPLAINT AND DEMAND) FOR JURY TRIAL)	
11	D.C. I.)	
12	Defendant.	<u>)</u>	
13	<u>COMPLAINT</u>		
14	THOMAS DELEO ("Plaintiff"), by and through his attorneys, KIMMEL &		
15	SILVERMAN, P.C., alleges the following against NATIONAL REPUBLICAN SENATORIAI		
16	COMMITTEE ("Defendant"):		
17	INTRODUCTION		
18	1 Plaintiff's Complaint is base	d on the Telephone Consumer Protection Act	
19	1. Plaintiff's Complaint is based on the Telephone Consumer Protection Ac		
20	("TCPA"), 47 U.S.C. § 227 et seq.		
21	JURISDICTI	ON AND VENUE	
22	2. Jurisdiction of this Court arise	es pursuant to 28 U.S.C. § 1331. See Mims v.	
23	Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).		
24	3. Defendant conducts business in the State of New Jersey and as such, persona		
25	jurisdiction is established.		

4.

2

3

4 5

6 7

8

9

10

11 12

13

14

15

16 17

18

19

20

21

22 23

24

25

14. Plaintiff has been on the Do Not Call Registry since May 9, 2009.

15. These unsolicited text messages placed to Plaintiff's cellular telephone were placed using an automated telephone dialing system (ATDS).

16. The text messages were not sent to Plaintiff for "emergency purposes."

PARTIES

5. Plaintiff is a natural person residing in North Caldwell, NJ 07006.

Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

- 6. Plaintiff is a "person" as that term is defined by 47 U.S.C. § 153(39).
- Defendant is a corporation that has its headquarters located at 425 2ND Street NE, 7. Washington, DC 20002.
 - 8. Defendant is a "person" as that term is defined by 47 U.S.C. §153(39).
- 9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

- 10. Defendant devised and implemented a campaign marketing strategy which includes the transmission of text messages through use of an automatic telephone dialing system.
- 11. Plaintiff received multiple text messages from Defendant to his cellular telephone XXX-XXX-0372.
- 12. Defendant did not obtain express consent from Plaintiff prior to sending the Plaintiff the unsolicited text messages.
- 13. Plaintiff never provided his cellular telephone number to Defendant, has no affiliation with Defendant, has never provided any donations to Defendant, and has not attended any rallies organized by Defendant.

17. The actions described herein were in violation of the TCPA.

COUNT I Defendants Violated the TCPA 47 U.S.C. § 227(b)

- 18. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.
- 19. The TCPA prohibits placing calls or text messages using an automatic telephone dialing system or automatically generated or prerecorded voice to a cellular telephone except where the caller has the prior express consent of the called party to make such calls or where the call is made for emergency purposes. 47 U.S.C. § 227(b)(1)(A)(iii).
- 20. Defendant initiated multiple text messages to Plaintiff's cellular telephone number using an automatic telephone dialing system.
 - 21. Defendant's texts were not made for "emergency purposes."
- 22. Defendant's texts to Plaintiff's cellular telephones without any prior express consent.
- 23. Defendant contacted Plaintiff despite the fact that Plaintiff has been on the Do Not Call Registry.
- 24. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.
- 25. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

26. As a result of the above violations of the TCPA, Plaintiff has suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles damages.

COUNT II Defendant Violated the TCPA 47 U.S.C. § 227(C)

- 27. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.
- 28. The TCPA prohibits any person or entity of initiating any telephone solicitation to a residential telephone subscriber who has registered his or his telephone number on the National Do-Not-Call Registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government. 47 U.S.C. § 227(c).
- 29. Defendant contacted Plaintiff despite the fact that Plaintiff has been on the Do Not Call Registry since June 2004.
- 30. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.
- 31. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.
- 32. As a result of the above violations of the TCPA, Plaintiff has suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles damages.

Wherefore, Plaintiff, Thomas DeLeo, respectfully prays for judgment as follows:

- a. All actual damages Plaintiff suffered (as provided under 47 U.S.C. § 227(b)(3)(A));
- b. Statutory damages of \$500.00 per violative telephone call (as provided under 47 U.S.C. § 227(b)(3)(B));
- c. Additional statutory damages of \$500.00 per violative telephone call (as provided under 47 U.S.C. § 227(C);
- d. Treble damages of \$1,500.00 per violative telephone call (as provided under 47 U.S.C. § 227(b)(3));
- e. Additional treble damages of \$1,500.00 per violative telephone call (as provided under 47 U.S.C. § 227(C);
- f. Injunctive relief (as provided under 47 U.S.C. § 227(b)(3) and (c); and
- g. Any other relief this Honorable Court deems appropriate.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, THOMAS DELEO, demands a jury trial in this case.

CERTIFICATION PURSUANT TO L.CIV.R.11.2

I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not subject to any other action pending in any court, arbitration or administrative proceeding.

1		RESPECTFULLY SUBMITTED,
2		
3	DATED: 03/02/2021	By: <u>/s/ Amy L. Bennecoff Ginsburg</u> Amy L. Bennecoff Ginsburg, Esq.
4		Kimmel & Silverman, P.C. 30 East Butler Pike
5		Ambler, PA 19002 Phone: (215) 540-8888
6		Facsimile: (877) 788-2864
7		Email: <u>teamkimmel@creditlaw.com</u>
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		